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ABSTRACT

The problem with suspensions is that they create a conflict of rights. On the one hand, there is the basic right of all students to obtain an education without violence, conflict, abuse, extortion, or intimidation. On the other hand, there is the right of the individual student to receive justice and due process. Recent court decisions support conflicting points of view although some areas are being clarified--suspensions are legal under certain conditions when proper procedures are followed; suspensions may have been overused as a discipline measure; suspensions appear to be appropriate as a short-term emergency measure; prior to suspension, students are entitled to a fair hearing and to due process; and, to avoid liability, schools should provide alternative educational opportunities for suspended students. (Author/IRT)

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CAN SCHOOLS SUSPEND YOUR CHILDREN?

Donald Thomas

All of us can remember school fights. When two boys scrapped on the playground, they were sent home and told not to come back "until your parents see the principal." If Johnny pulled Suzie's hair, a quick two-day suspension was the result. If the problems were more serious, students were sent home for longer periods of time. "When you learn to obey school rules," they were told, "you can come back to school."

When children were suspended from school in the "old days," parents came to school for a serious conference. The principal recited the violations committed by the students and emphasized the need for discipline. He talked about proper behavior, the need for parents to support the school, and the values associated with good student conduct. Parents listened politely. The student usually received additional punishment at home. Things have changed!

Recent court decisions have made it more difficult to suspend students from school. There are certain things that schools can and cannot do in the area of suspensions. In addition, the threats of legal action by parents have forced school officials to become more cautious in suspending students. Many groups are now insisting that suspensions are illegal and that parents should sue when children are denied the opportunity of going to school. This is illustrated by case of the first grade student who was sent home because he had used abusive language. When told by the mother to cry if he were upset, the child said: "Cry, heli! I'm going to sue someone!"

The problem with suspensions is that it creates a conflict of rights. On the one hand, there is the basic right of all students to obtain an education without violence, conflict, abuse, extortion, or intimidation. On the other hand, there is the right of the individual student to receive justice and "due process." The rights of schools to educate

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and maintain order are longstanding traditional rights. The right of "due process" is guaranteed under the U.S. Constitution. Due process is a procedure to establish fairness while making decisions or enforcing "reasonable rules and regulations."

School officials have a difficult time doing a balancing act between the rights of the entire student body and the rights of individual students. Faced with increased disregard for school rules and regulations, they are unable to use suspensions in the traditional manner. At the same time, they have a deep concern for all legal rights which the courts now say apply to children as well as adults.

Suspensions also raise fundamental questions about education in a free society. Is education an unqualified right? Do all students have a right to an education regardless of their conduct? How far should school officials go to promote justice? Is due process in schools the same as due process in courts? When may a child be removed from the classroom? Does suspension from school create financial liability for school officials?

These are difficult and complex questions. Recent court decisions support conflicting points of view. Some things, however, are being clarified. While there is still much concern among teachers and parents, the issues around suspensions are becoming increasingly clear. The things that schools can and cannot do are being more precisely defined. Here is what is happening.

Suspensions are legal under certain conditions when proper procedures are followed. In Williams v. Dade County School Board, the court held that suspension was proper as an emergency matter. Goss v. Lopez established that children have a basic right to an education; and if they are suspended from school, they are entitled to a fair hearing and to adequate due process. Both cases supported suspension under appropriate conditions.

In Tinker v. Des Moines Independent Community School District, the court said that students could not be suspended for exercising a right guaranteed to them by the Bill of Rights. Wood v. Strickland established the need for proper due process procedures prior to suspension, similar to Goss v. Lopez.

At the college level, in Dixon v. Alabama State Board of Higher Education, the court said that college students have a right to a fair hearing before expulsion. Percy McDonald v. Board of Trustees of the University of Illinois held that an informal hearing was properly conducted prior to expulsion.

These cases clearly support the ability of schools to suspend students from school. They do say, however, that prior to such action, students are entitled to basic rights which are theirs under the U.S. Constitution. Such rights include a fair hearing, due process, and the right of appeal. The decisions generally try to balance the two important, historical, and fundamental rights: The right of schools to educate and the right of individuals to receive constitutional justice.

Suspensions may have been over-used as a discipline measure. It is estimated that one out of every ten junior and senior high school students is suspended from school each year. Information from the Office of Civil Rights indicates that during a school year about 20,000 students are suspended in New York City, about 9,000 in Miami, about 15,000 in Cleveland, about 7,000 in Akron, and about 9,000 in Memphis. Grounds for suspension vary greatly from school district to school district. Some suspend for "defiance of authority," some for "insubordination," and others for "refusal to conform with reasonable rules and regulations." Some districts suspend students for "classroom disruptions." One district suspended two students for "inappropriate eating manners in the cafeteria."

Suspensions are strongly opposed by minority groups. They claim that minority children are hurt by such actions. They also show that a disproportionate number of minority children are suspended by white administrators who cannot relate to minority students. In New York schools 64% are minorities, but of those suspended 86% are minorities. In Dallas the school population is 49% minority, but of those suspended 68% are minorities. The highest rate of suspension appears to occur with blacks; the next, with Spanish children; and the next, with other minorities. Those who oppose suspension claim that minority children are further handicapped when they are denied the opportunity to continue their education.

Suspensions appear to be appropriate as a short-term emergency measure. Williams v. Dade County School Board has established that suspension is appropriate as an emergency measure. In that case, the court said that suspension may be used "to remove unruly students at a particularly tense time." In Goss v. Lopez, Justice White supported the possibility of short term suspension when the actions of students endangered the academic process.

When such actions are taken, however, parents are entitled to some basic information. School officials should make clear the reasons for their actions and explain the basis for suspension. Parents should also be informed about appeal procedures. They should have an opportunity to meet with the Board of Education if they wish to do so. And finally, parents are entitled to know the remedies required by the school so that students may continue their educational program at a later time.

Suspensions justified under emergency situations are usually of short duration, many of them for only one day or until the emergency has been controlled. Even the most adamant

opponents of suspension accept such action under emergency situations. Generally the courts do not interfere with school officials who act to control explosive situations and conditions which may result in "injury to persons or damage to property."

Prior to suspension students are entitled to a fair hearing and to due process. Students and parents are entitled to know school board policies and suspension procedures. Goss, Dixon, and Wood all established the basic right of students to procedural due process before suspension. This matter, however, is not yet fully settled. Debate will continue concerning what constitutes a fair hearing, what steps are involved in due process, and to what extent school officials must go to establish procedures followed by law enforcement agencies. There is agreement, however, that before suspension due process must be followed. Some type of hearing must be conducted.

Goss contends that students are entitled to the minimum procedures of due process for short suspensions (less than 10 days) and "more formal procedures" for longer suspensions. At the same time the court said: "Nor do we put aside the possibility that in unusual circumstances, although involving only a short suspension, something more than rudimentary procedures will be required." Such circumstances may be when extreme damage would result from the suspension: not graduating, not being able to go to college, not being accepted for a job. It is essential that, in the process, students are allowed to explain their side of the situation and that they are given a fair opportunity to discuss the matter.

A fair hearing requires that school officials suspend judgment until all information is obtained. School officials should listen to all parties. A final decision should be made after an objective and thorough investigation. Due process requires that school officials inform students of their investigation. If the decision is to suspend, students are to be

given the reasons for suspension, the information gathered by the official, and the procedures for appealing the decision. Parents should be informed as quickly as possible and given the same information presented to the students.

Should the parents and their children appeal the decision of a principal, they are entitled to meet with the superintendent, and if not satisfied, to have a hearing before the Board of Education. Beyond that they have redress through the courts.

Wood, in addition to establishing the need for due process, also dealt with the question of financial liability. The opinion of the Court was that liability occurred if school board members acted "with the malicious intention to cause a deprivation of constitutional rights or other injury to the student." Should it be determined that officials act without justification in suspending students, they may be required to pay money damages.

To avoid liability, schools should provide alternative educational opportunities for suspended students. Students may claim that because of suspensions they were unable to graduate, get a job, go to college, or acquire some benefit. To reduce this possibility, school officials often provide opportunities for home study, adult school, or evening classes for suspended students.

Parents of suspended students should consult with school officials to make alternate educational plans for their children. Credits may be earned through individualized home-study program, correspondence courses, adult education programs, and classes in the evening school. The chief aim is to make it possible for the student to continue his education without attending regular classes. Recent court decisions support school officials who suspend students from classes, but provide other ways of continuing their education. Thus liability is reduced because possible "educational damage" to the student is lessened.

School officials should separate educational opportunity from punishing students for school infractions. Following a hearing, due process procedures, and determining that students should be suspended; it may, nevertheless, make sense to provide alternative educational opportunities, so that students are punished but do not stop learning.

Today schools are faced with escalating student disruptions and school conflict. Under such pressures, school officials often remove students from school. Suspension thus becomes a test between the school's need for order and the student's right to an education.

No one can show with clarity that suspensions prevent an increase of student violence. School officials claim that they do. Student advocates claim that they do not. The courts are reluctant to make a judgment. Courts have clearly said, however, that when suspension is used, the constitutional rights of students must be protected. This includes a fair hearing, proper due process, and the possibility of alternative educational programs.

While the area of suspension may be in great conflict at the present time, if school officials and parents work together to develop acceptable guidelines, all may benefit. Schools may be able to reduce rapidly rising violence and students may be protected from unjust, punitive actions. The challenge is not to "win" over one another. Rather, it is to find a way which is satisfactory to both schools and homes.

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